

LABOR ADVISORY BOARD MEETING

Meeting Minutes

January 19, 2010

1:00 p.m.

LAB Member Attendance:

Mark Guethle, John Penn and Tom Villanova

IDOL Staff Attendance:

Catherine Shannon, Bert Rodriguez, Michael Haggerty, John Bastert, Suzanne Davis, Anjali Julka, Doris Moy, Sara Scherer, Tom Whalen and Carmela Gonzalez

Call to Order:

Meeting called to order at 1 pm by Director Catherine Shannon.

Director Update:

Preference Act:

The Preference Act is one of the laws the Department is charged with enforcing. This law essentially recites that during periods of excessive unemployment (for more than two months in excess of five percent) the Department would give preference to Illinois workers on public works projects. The agency has not been enforcing this Act since 2002 out of concerns related to its constitutionality. Currently, the Department is working with State Senators and Representatives, as well as individuals from the building trades and the business community, to see if a legislative solution can be found to remedy the Act so that it is enforceable.

OSHA State Plan:

On September 1, 2009, the Department received a \$1.5 million matching grant from the federal government for Illinois' Occupational Safety and Health State Plan for public sector worksites only. The Department has been hiring new staff and has named the Division Manager and the Chicago Enforcement Manager. Additional staff will be hired in the coming months.

Additionally, the Department is working with federal OSHA to do an outreach event(s) informing public employers in the Chicagoland area, as well as worker and unions that represent public employees on how the new OSHA State Plan will impact their worksites. The Department plans on holding a press conference (mid-March) to inform the media of all the changes for employers with public sector worksites.

Assistant Director Update:

Budget Update:

The Board was made aware of the budget difficulties the State is currently facing and how those challenges would impact every single division in the Department. The Board was informed of the 14% across-the-board cut for all state agencies. Additionally, discussion centered on previous budget numbers and how there has been a steady decline from 2008 to present.

Tom Villanova asked how much money (if any) the Department had received from the Employee Classification Act (ECA) penalties. Assistant Director Bert Rodriguez explained that it was too early in the process to collect a substantial amount of money from the investigations in which violations were found. Currently, just over \$4,000 is in the fund (please refer to Conciliation and Mediation division report for further information on penalty amount) but certainly in the future money collected would be a tool that would benefit the Department in bringing in additional revenue. Director Catherine Shannon pointed out that even though the money has been collected, it would still need to be appropriated by the General Assembly before any of the ECA funds could be spent on enforcement activities.

Division Reports and Board Discussion:

Legislative Division:

Legislative Liaison Sara Scherer reported on the following:

The proposed legislative changes for the Carnival Amusement Ride Safety Act for the upcoming session would be:

- Cover monster trucks (if they are being used as an amusement ride) under the Act.
- Prohibit use of cell phones by amusement ride operators while operating the amusement ride.
- Annual sticker permits should be returned and/or surrendered to the Department if ride or attraction is sold or upon the Department's request.

The proposed legislative changes for the Child Labor Law for the upcoming session would be:

- An out of state child that needs a permit to work in Illinois would not have to come in person for the certificate to be issued.
- Department would work with the superintendent of schools to issue that certificate. One point of clarification, the Department does not issue certificates. The proposal would clarify that the Department can work with the superintendent to issue said certificate.

The proposed legislative changes for the Wage Payment and Collection Act for the upcoming session would be:

- Department to assess a 20% penalty at the Department level versus the Attorney General's level in order to potentially see an increase in revenue at the front end of the collection process to help fund enforcement activities.

The following is an update on the Department's administrative rules:

- The Carnival and Amusement Rides Safety Act administrative rules became effective on December 29, 2009. These rules incorporate the new safety standards and address the new background check requirements.
- The first notice for the State Construction Minority and Female Building Trades Act proposed rule was submitted in November of 2009. The Department is preparing the second notice for the Joint Committee on Administrative Rules (JCAR). The emergency rule was submitted at the same time and they are in effect for 150 days.
- The first notice for the Illinois Resident Labor proposed rule was submitted in November of 2009. The Department is preparing the second notice for JCAR. The emergency rule was submitted at the same time and they are in effect for 150 days.
- The first notice was submitted for the Health and Safety Act Subpart C and ended on December 14th. The Department is preparing the second notice for JCAR.

Legal Division:

Chief Legal Counsel Michael Haggerty spoke about the following major litigation in the Department:

- **Midway Games**
Former employees (15) filed wage claims with the Department alleging they were owed paid time off. It was determined wages were owed to employees but the entity filed bankruptcy. Because of the bankruptcy, the wage demand issued was made out to the officers of the entity. Currently, officers of Midway Games are suing the Director of Labor (in Delaware) seeking to enjoin the Department from proceeding against them. The case was referred to the Attorney General's (AG) office for enforcement and they have filed a motion to dismiss. More updates to follow at the next meeting.
- **Sackville Construction**
A Rock Island circuit court decided as a matter of equity not to require the entity to pay prevailing wage on a public works project due to the entity not receiving notice from the public body that the project was

subject to the Act. The Department has appealed this decision and opening briefs are to be filed by both sides (January 22nd and February 26th). More updates to follow at the next meeting.

- **Section 9 Challenges**

Five (5) challenges were filed last summer to the Department's annual prevailing wage schedule. Three of the matters settled and two are still pending – Elgin Sweeping and A-1 Lock. More updates to follow at the next meeting.

Conciliation and Mediation Division:

Division Manager, Tom Whalen reported on the following:

- **State Construction Minority and Female Building Trades Report**

The Department is mandated to post annually (by March 1st) an annual report regarding the race, gender, ethnicity and national origin of apprentices in the construction industry throughout the State. To that end, the Department sent a mailing to 212 Illinois construction apprenticeship programs registered with US DOL. The Department received a good response (approximately 80% of the forms were returned) and currently agency staff is tallying and analyzing the numbers to finalize the annual report.

- **Prevailing Wage Act**

From September 2009 through November 2009, the Department issued 30 notices of violation, two (2) second notices of violation and 341 complaints have been filed with the Department.

- **Employee Classification Act**

To date, the Department has received 158 complaints: 63 have been dismissed with the remaining 95 currently being investigated. The Department has issued eight (8) "Final Determination – Notice of Violation" letters and assessed penalties totaling \$768,500 and collected close to \$7000 in penalties.

Fair Labor Standards Division:

Division Manager, Suzanne Davis reported on the following:

- **Day and Temporary Labor Services Act**

The Department has registered 205 agencies with 629 locations so far for CY 2010. Follow up calls and visits will be made to ensure that all agencies that were registered the previous year and have not done so to date (55) know that it's time to renew their license.

- **Wage Payment and Collection Act**

The Department has collected \$940,000 to date in FY 2010 (a 33% increase in collections from last year). In FY 2009, total amount collected for workers was approximately \$1.7 million.

- **Minimum Wage/Overtime Law**

The Department has collected \$635,000 to date in FY 2010 (a 67% increase in collections from last year). In FY 2009, total amount collected for workers was approximately \$1.4 million.

Equal Opportunity Workforce Division:

Division Manager, Doris Moy reported on the following:

- **Main Street Liquors**

The Illinois Appellate Court upheld a ruling the Cook County Circuit Court ordered and demanded that the employee be paid back wages (\$4061.25) and a penalty amount (\$8622.50).

- ***Undisclosed retail pharmacy (open case)***

The Department found a violation against the entity and is seeking approximately \$9000 in back wages and a \$1000 penalty has also been assessed. If payment is not received by January 20th, the Department will refer this matter over to the Attorney General.

- ***Equal Pay Act***

The Department is currently working on updating its administrative rules for the Equal Pay Act, which will reflect changes in the law as a result of HB3634 becoming effective.

- ***Victims' Economic Security and Safety Act (VESSA)***

Recent changes state that employers that have 15 to 49 employees are now covered under the Act. The Department wanted to inform the approximately 32,000 employers that were going to be affected by this change. Target Corporation awarded grant money to the Department and with that grant, the mailing will be funded. Additionally, this grant will also allow the Department to mail its updated overall employment laws poster to those employers.

Public Safety Update:

Chicago Enforcement Manager, John Bastert reported on the following:

- ***Quarter Update***

For the quarter (September 2009 – November 2009) there was only one fatality in public sector worksites.

- ***Safety Standards***

The mission of the Division continues to be the same, however, with the OSHA State Plan steps have been taken to update our current safety standards to mirror the federal government's standards.

- ***Outreach***

The Department will be working with the Department of Public Health in order to expand the current Illinois State Survey and to establish a baseline for statistics in order to better document trends, especially injuries so the Department might be able to focus on the locations with the most injuries.

Media Update:

Communications Manager, Anjali Julka reported on the following:

- ***Media Related Questions/Interviews***

Assistant Director Rodriguez spoke to the Bureau of National Affairs Daily Labor Report related to ECA and the penalties to date assessed as well as the Illinois Chamber posting something about ECA on their twitter site.

- ***Press Releases***

Upcoming releases will be reported on at the next meeting.

Meeting Adjourned:

Director Catherine Shannon adjourned the meeting at 3:14 pm.